



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Techniarts Engineering; Department of the Navy--
Reconsideration

File: B-238520.3; B-238520.4

Date: June 27, 1991

William A. Roberts, III, Esq., Howrey & Simon, for Techniarts Engineering.

John W. Fowler, Jr., Esq., Saul, Ewing, Remick & Saul, for Peirce-Phelps, Inc., the protester.

Margaret A. Alfano, Esq., Department of the Navy, for the agency.

David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Awardee's claim that it also had submitted an alternate proposal that was not properly evaluated by the agency does not provide a basis for reconsidering decision that award was improper because agency had failed to evaluate protester's alternate proposal; General Accounting Office will not consider new arguments raised by interested party in request for reconsideration where those arguments could have been raised during consideration of the initial protest.

DECISION

Techniarts Engineering and the Department of the Navy request reconsideration of our decision in Pierce-Phelps, Inc., wherein we sustained Pierce-Phelps' protest against the award of a contract to Techniarts, under request for proposals (RFP) No. N00024-89-R-4263(Q), for shipboard information, training and entertainment systems.

We affirm our prior decision.

The solicitation requested proposals on a "brand name or equal" basis; it provided for award to the low, responsible offeror whose proposal was technically acceptable. Pierce-Phelps protested the award to Techniarts on the basis that the Navy had failed to evaluate Pierce-Phelps' alternate proposal of lower-priced "equal" items, the acceptance of which would render it the low offeror in line for award. Although

Techniarts and the Navy disputed whether the equal items were incorporated into an alternate proposal, we agreed with the protester that its offer of the equal items was sufficiently definite to constitute an alternate proposal which the agency was required to take into account in conducting negotiations and in its final evaluation of offers. In this regard, the agency had commenced technical discussions with Pierce-Phelps concerning the proposed equal items and had not questioned their technical acceptability.

Techniarts requests reconsideration on the basis that it likewise submitted an alternate proposal that the agency failed to evaluate. According to Techniarts, had the agency properly evaluated its alternate proposal, Techniarts would be entitled to award as the low, technically acceptable offeror notwithstanding consideration of Pierce-Phelps' alternate proposal. During negotiations, the Navy rejected Techniarts' alternate proposal as technically unacceptable and not suitable for further consideration; it now reports, however, that it is undertaking a reevaluation of the alternate proposal.

We will not consider this basis for reconsideration. Under our Bid Protest Regulations, a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which a reversal or modification of the initial decision is warranted as well as specify any errors of law made or information not previously considered by this Office in rendering its prior decision. 4 C.F.R. § 21.12(a) (1991). Information not previously considered means information that was not available when the initial protest was filed. Norfolk Dredging Co.--Recon., B-236259.2, Oct. 31, 1989, 89-2 CPD ¶ 405. Failure to make all arguments or submit all information available during the course of the initial protest undermines the goals of our bid protest forum--to produce fair and equitable decisions based on consideration of both parties' arguments on a fully-developed record--and cannot be rectified by a subsequent request for reconsideration of our decision. Department of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546.

The requirement for the evaluation of alternate proposals and, consequently, the overall evaluation of proposals, was directly at issue in the initial protest. Nevertheless, Techniarts did not avail itself of the opportunity to argue that its own alternate proposal also was improperly evaluated and that, when properly evaluated, the alternate proposal entitled it to award (although at a lower price than the contract Techniarts was awarded based on its principal proposal). Since this argument was available but not raised during our consideration of the initial protest, it does not

provide a basis for reconsidering our decision. Department of the Army--Recon., B-237742.2, supra.

In its request for reconsideration, the Navy questions our finding that Pierce-Phelps was entitled to recover its protest costs. The Navy maintains that it acted in compliance with statute and regulation when it evaluated proposals; according to the agency, our decision rested upon "a new principle of government contract law" requiring an agency to take into account when evaluating proposals any cover letters submitted with a proposal. For this reason, the Navy believes it was unfair to find Pierce-Phelps entitled to recover protest costs.


Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1) (1988), a protester may be entitled to reimbursement of the reasonable cost of filing and pursuing a protest where we determine that an award does not comply with statute or regulation. The requirement for agencies to fairly and honestly consider proposals, including the statutory requirement for meaningful discussions, extends to alternate proposals. See San/Bar Corp., B-219644.3, Feb. 21, 1986, 86-1 CPD ¶ 183; Ultra Publicaciones, S.A., B-200676, Mar. 11, 1981, 81-1 CPD ¶ 190; Minority Media Syndicate Inc.; North Am. Precis Syndicate, Inc., B-200823; B-200823.2, Feb. 12, 1981, 81-1 CPD ¶ 96.

Cover letters and extraneous documents submitted with offers have long been considered as part of the offers and must be considered in determining what offerors are proposing to furnish under the contemplated contract. See, e.g., AEG Aktiengesellschaft, 65 Comp. Gen. 418 (1986), 86-1 CPD ¶ 267 (cover letter to proposal); Sabre Communications Corp.--Recon., B-233439.2, June 30, 1989, 89-2 CPD ¶ 14 (cover letter to proposal); Outdoor Venture Corp., B-235056, June 16, 1989, 89-1 CPD ¶ 571 (letter submitted on day of bid opening); Plant Sys., Inc., B-226898, May 14, 1987, 87-1 CPD ¶ 517 (cover letter to bid); Rolm S. California, B-216955, Mar. 14, 1985, 85-1 CPD ¶ 327 (cover letter to proposal); J.A. Wynne Co., Inc., B-181807, Nov. 18, 1974, 74-2 CPD ¶ 268 (extraneous documents submitted with a bid must be considered part of bid). An offeror's cover letter separately drafted for submission in a particular procurement may modify or limit the obligations the offeror would otherwise assume under the terms of the solicitation. Only by evaluating a cover letter or extraneous documents submitted with an offer can a contracting officer assure himself of making award on the basis of a compliant offer which satisfies the agency's

minimum needs; only by evaluating such documents can he assure himself of making the award most advantageous to the government. Indeed, the Navy initially considered Pierce-Phelps' alternate proposal in its evaluation of proposals.

Our initial decision rested not upon a new principle of law, but on well-established federal procurement principles concerning the evaluation of proposals; it reflected our determination that the agency's evaluation was unreasonable and not in accordance with its obligations under the Federal Acquisition Regulations. In these circumstances, our finding of an entitlement to the recovery of protest costs, including those incurred in this proceeding, is consistent with the statutory mandate. General Servs. Admin.--Recon., B-237268 et al., Nov. 7, 1990, 90-2 CPD ¶ 369.

Our prior decision is affirmed.


for James F. Hinchman
General Counsel